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Spokane County adopts emergency ordinance to address controversial Hirst water rights decision

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Spokane County has adopted an emergency ordinance that officials say will prevent a moratorium on building permits.

The action is in response to the controversial water rights decision made by the state's highest court.

"This is an important step to ensuring Spokane County follows the law, as interpreted by the Washington Supreme Court, while also protecting property rights of our citizens," Commissioner Al French said in a news release Tuesday.

The Hirst decision, which took effect Oct. 27, stipulates that new developments can't diminish water supplies to senior right-holders, or cause stream flows to drop below environmental targets set by the state. It primarily affects rural property owners who rely on wells rather than public water utilities.

Proponents say the decision protects fish and ensures that new homes will have an adequate water supply. A 2013 investigation by The Spokesman-Review found that dozens, perhaps hundreds, of people in rural parts of the county live without enough water for basic needs, much less the luxury of a green lawn. Some residents paid tens of thousands of dollars to tap into public water lines.

Critics, meanwhile, call the decision a major obstacle to obtaining building permits, as permit-seekers must prove there's enough water in the ground to support a new development.

The county ordinance may reduce that burden of proof. In most of the county, the ordinance says, a new well can't be drilled within 500 feet of any existing one. County officials believe that distance satisfies the requirements of the Hirst ruling.

It will remain difficult to obtain a water permit on the Little Spokane River watershed, which encompasses the northern part of the county and has a state rule setting minimum stream flows.

Courts generally treat such rules as senior water rights: Rivers are entitled to a given amount of water, and that right can't be infringed upon by a new well in the area.

County spokesman Jared Webley said the ordinance "confirms that there's not much we can do with an instream flow rule."

Officials plan to hold a public hearing, to consider making the ordinance permanent, within 60 days.

Prospective builders rushed to submit permit applications before the ruling took effect. From Oct. 20 through Oct. 26, the county received 453 applications – about nine times the usual number, officials said.

The Supreme Court based its decision on Washington's Growth Management Act, a 1990 law that has drawn numerous lawsuits, including four in Spokane County that resulted in a sweeping settlement in June.

State lawmakers said they hope to amend the law to ease any development restrictions caused by the ruling. But it's quickly becoming a partisan issue, with "property rights" as a central talking point.

Republicans have said the decision infringes on property rights because it stalls rural development unless there's a permitted source of water. The decision effectively eliminates the category of permit-exempt wells, which was created to avoid processing costs for small withdrawals of water.

"The policy fix would be pretty straightforward," said Sen. Michael Baumgartner, R-Spokane. "You would simply amend the (Growth Management Act) to allow permit-exempt wells."

But diminishing a neighbor's water supply also infringes on property rights, said Rep. Joe Fitzgibbon, a Burien Democrat and chairman of the House Environment Committee.

Fitzgibbon said permit-exempt wells and "undeterred development" can put a strain on water supplies.

"Mike Baumgartner can make all the bills he wants, but he's not going to make more water," he said.

A better solution is water-banking, in which local governments buy and sell water rights, Fitzgibbon said. "I think the Legislature could build a framework and some certainty for water-banking, building on what Kittitas County has done."

Spokane County officials have been working to create a water-banking program for several years.